[illegible]

CASPAR W. WEINBERGER, [illegible]
Secretary of the Department
of Health, Education and
Welfare,

Appellant,

-vs-

SAMUEL [illegible], et. al.,

Appellees.

[illegible] OF
RIGHT TO FILE MOTION TO
DISMISS OR AFFIRM AND [illegible] OF
[illegible] TO [illegible]

Appellees, by and through their undersigned counsel, respectfully move this Honorable Court to enter an Order allowing with consent of Appellees' Waiver of the Right to File Motion to Dismiss or Affirm (filed herein on October 21, 1974) [illegible] further consideration of the instant case [illegible] Weinberger, [illegible] (1973), and in support thereof state:

On February 26, 1974 this Court issued its decision in Memorial Hospital, et al. v. Maricopa County, et al., (U.S. 42 U.S.L.W. 4277). The Court there held that a durational residency requirement violated the Equal Protection Clause in that it created an "invidious classification" that impinges on the right of interstate travel by denying newcomers the "basic necessities of life," to wit; free medical care for indigents. Since it cannot reasonably be argued that medical care is any the less a basic necessity of life for aliens than it is for citizens, a classification which denies aliens Medicare benefits as does that portion of the Social Security Act struck down by the District Court in the instant case while at the same time authorizing Medicare benefits for citizens (and long term resident aliens), is clearly an invidious discrimination which must fall under the weight of the Fifth Amendment Due Process Clause. Bolling v. Sharpe, 347 U.S. 497 (1954).

BEST COPY AVAILABLE

[illegible]

with other [illegible]

instant case. ([illegible], 404 U.S. [illegible] (1972); [illegible]

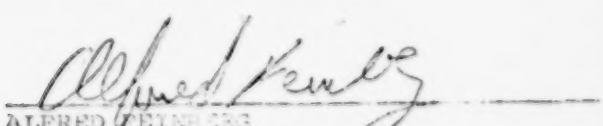
[illegible] U.S. [illegible], [illegible] 20, [illegible] and [illegible]

Dept. of H.E.W., [illegible] F.2d [illegible], [illegible] 2, 1973), [illegible]

affirmed [illegible] of [illegible] the creation of a double standard of governmentally financed health care services, one for aliens lawfully present within the United States, and one for citizens. Obviously the health care needs of one group are no less basic than they are for the other.

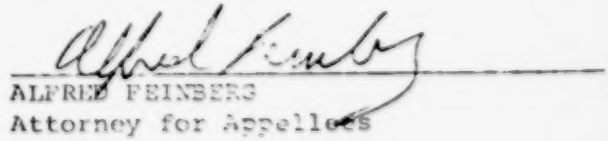
WHEREFORE, and for the foregoing reasons, appellees respectfully move this Honorable Court to stay entry of an order [illegible] withdrawal [illegible] Appellees' Motion for the Right to [illegible] within Motion for [illegible] time.

Respectfully submitted,



ALFRED FEINBERG
Attorney for Appellees
LEGAL SERVICES OF GREATER MIAMI, INC.
395 N. W. First Street, Suite 203
Miami, Florida 33128
Telephone No. 379-0822

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by United States Mail upon Mr. ROBERT H. BORK, Solicitor General of the United States, Mr. IRVING JAFFE, Acting Assistant Attorney General of the United States, Mr. EDWARD W. KITCH, Assistant to the Solicitor General of the United States, and Mr. STEPHEN F. EILPERIN, Attorney, at the United States Department of Justice, Washington, D.C., and Mr. ROBERT W. RUST, United States Attorney, 300 Ainsley Building, Miami, Florida, this 9 day of April, 1974.



ALFRED FEINBERG
Attorney for Appellees

BEST COPY AVAILABLE